

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY J. DeVITA,	§
	§ No. 80, 2006
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. VN96-04-0506-03
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 28, 2006
Decided: August 29, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 29th day of August 2006, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Anthony J. DeVita, filed an appeal from the Superior Court's January 18, 2006 order correcting his probationary sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we affirm.

(2) Between November of 1996 and November of 2004, DeVita pleaded guilty to and was sentenced in connection with a number of criminal offenses, including Vehicular Assault, Driving After Judgment Prohibited, Criminal Impersonation, Possession of Drug Paraphernalia, Forgery in the Second Degree,

and Driving Under the Influence of Alcohol. During that time, DeVita also was found to have violated several of his probationary sentences.

(3) In April 1998, DeVita was sentenced on his conviction of Driving After Judgment Prohibited to 5 years of Level V incarceration, to be suspended after 3 months for 4 years and 9 months of probation. In January 2003, DeVita was found to have violated his probation in connection with that sentence and was sentenced to 4 years of Level V incarceration, to be suspended for 4 years of home confinement, to be suspended in turn after 6 months for 3 years of probation. In November 2004, DeVita again was found in violation of his probation and was sentenced to 4 years of Level V incarceration, to be suspended after 3 years for Level III Aftercare.¹

(4) In October 2005, DeVita moved to correct his sentence on the Driving After Judgment Prohibited conviction on the ground that 30 months of Level V incarceration was the maximum permitted under the statute.² The Superior Court granted DeVita's motion in January 2006 and imposed 27 months of Level V incarceration, to be suspended after successful completion of the Key Program for 1 year of Level III Aftercare, which reflected the 3 months DeVita already had served on the original sentence.

¹ That sentence was modified shortly thereafter to provide for DeVita's participation in the Key Program during his incarceration.

² Del. Code Ann. tit. 21, § 2810 (a) (effective Jan. 15, 1995).

(5) In this appeal, DeVita claims that the Superior Court exceeded its authority by correcting his sentence pursuant to Superior Court Criminal Rule 35(a) without holding a hearing. DeVita argues that, because there was no hearing, he was deprived of the opportunity to present evidence that “DeVita was violated on a sentence that had not been previously violated and had expired.”³

(6) DeVita is incorrect that the Superior Court was mandated to hold a hearing in connection with his motion to correct his sentence.⁴ Because the Superior Court reduced DeVita’s sentence, DeVita had no right to be present to give evidence.⁵ As for DeVita’s contention that one of the sentences on which he was violated had already expired, he has presented no evidence to support that contention.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

³ Appellant’s Opening Brief at p.3.

⁴ Super. Ct. Crim. R. 35.

⁵ Super. Ct. Crim. R. 43(c) (4).